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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,333	01/31/2005	Adolphe Richard Dziulko	042536	8960
38834 7590 06/28/2007 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036			EXAMINER PHAN, THANH S	
			ART UNIT 2833	PAPER NUMBER
			MAIL DATE 06/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/500,333	Applicant(s) DZIULKO ET AL.	
	Examiner Thanh S. Phan	Art Unit 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, 5, 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2. Lines 3-4, recite "...with a dark portion representing the night extending on both sides of midnight at regular intervals of 5 minutes, but at irregular day intervals, as a function of these 5 minutes." It is unclear what is applicant intended. It is unclear what is considered as "midnight" since the display is "without any number". It is unclear what is "at **irregular day intervals**, as a function of these 5 minutes".

Clarification is needed.

Regarding claim 4. line 2 recites the limitation "the microprocessor". There is insufficient antecedent basis for this limitation in the claim.

Lines 2 -3, recite "to place and keep every day the image of the night within the programmed limits, as a function of values of a parallel". It is unclear what is intended as to "keep every day the image of the night", and "as a function of values of a parallel". Furthermore, the "programmed limits" is not defined. Clarification is needed.

Regarding claim 5. Line 1 onward, recite " wherein there are 144 code numerals, synonymous to 5 minute time periods..." It is unclear what is intended with the "144 code numerals..." Clarification is needed.

Regarding claim 7. The recite limitations are being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: it is unclear how a “winding mechanism is adapted, in order to have in the southern hemisphere...” Clarification is needed. Furthermore, it has been held that the recitation that an element is “adapted” to perform a function is not a positive limitation but only requires the ability to so perform.

Regarding claim 9. It is unclear what is applicant intended with the recited limitations. Furthermore, it has been held that the recitation that an element is “adapted” to perform a function is not a positive limitation but only requires the ability to so perform.

The examiner believes that the claims appear to be a literal translation into English from a foreign document and are confusing. The examiner suggests that the claims should be rewritten with clarity of **structural limitations** and their functionalities that define the invention.

As best understood by the examiner, the claims are rejected as follow:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claim 1, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Galison [US 5,245,590].

Regarding claim 1, Galison discloses a timing device [figure 1] displaying solar and lunar ephemeris at the planet scale [time and moon-phase] comprising: a solar display comprising an image display that display all along the year the evolution of the duration of the day and of the night according to solar or legal time [column 2, lines 13-16], wherein the solar display comprises an annular LCD screen [20] placed at a periphery of a dial of the watch that displays the duration of the night [time of the day/night] along the annular LCD screen between a sunset time and a sunrise time [night time], and a lunar display [LCD 14] comprising an electronic image display [LCD 14] that displays the phases of the moon at the scale of two hemispheres, wherein the lunar display is located at a center portion of the dial of the watch defined by the annular screen [figure 2].

Regarding claim 8. Although Galison does not specifically disclosed the claimed wristband, these features are seen to be an inherent teaching of that device since a means and/or complications for securing the wristwatch onto a user wrist must be present for the watch to attached to the user.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galison in view of Schenk et al. [US 6,359,839].

Regarding claim 2, Galison discloses the claimed invention except for wherein the solar display, without any number, is placed at the periphery of a 24 hour dial of the watch, with a dark portion representing the night extending on both sides of midnight at regular intervals of 5 minutes, but at irregular day intervals, as a function of these 5 minutes.

Schenk et al. teaches a watch with various embodiment of a 24-hour watch face [figures 1] wherein the face is without any number [figure 1c] is placed at the periphery of the dial and wherein the night duration is darkened [figure 1f].

Since Galison and Schenk et al. are both from the same field of endeavor, the purpose disclosed by Schenk et al. would have been recognized in the pertinent art of Galison.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teachings of Schenk et al. with Galison for the purpose of providing demarcations that indicating the time of day.

Regarding claim 3. Galison and Schenk et al. disclose the claimed invention. Schenk et al. further disclose wherein the 24 hour dial has each hour divided in 12 intervals by 6 bars thickened to the dimension of the spaces, so that the 12 intervals are represented by 6 black spaces alternated with 6 white [figure 1c].

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Regarding claim 6. Galison and Schenk et al. disclose the claimed invention. Schenk et al. further disclose programming buttons/switches to command the operation of the watch [figure 1c]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Galison; as modified; to have the buttons to function that correct a different between the display since Schenk et al. suggested that the watch has the capability to so perform.

Response to Arguments

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh S. Phan whose telephone number is 571-272-2109. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on 571-272-2800 ext 33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tsp


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